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FISCAL IMPACT STATEMENT

LS 7424

BILL NUMBER: HB 1462

NOTE PREPARED: Mar 31, 2009

BILL AMENDED: Mar 26, 2009

SUBJECT: Various Education Matters.

FIRST AUTHOR: Rep. Kersey

FIRST SPONSOR: Sen. Lubbers

BILL STATUS: As Passed Senate

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) This bill exempts a postsecondary educational institution from paying a fee for a limited criminal history record of a student in the institution's school of education before the student begins the student's field or classroom experience. The bill, however, allows the Indiana State Police Department (ISP) to charge a student a fee for responding to a request for the release of a limited criminal history record.

This bill gives qualified immunity for certain school employees for reasonable acts of discipline. It requires the Attorney General and the State Superintendent of Public Instruction to publicize annually to teachers that the Attorney General may defend suits against teachers and that teachers have qualified immunity for reasonable acts of discipline.

The bill requires a school corporation, a charter school, and an accredited nonpublic school to conduct an expanded criminal history background check before employing a potential employee in any position within the school corporation.

This bill also adds possession of child pornography to the list of felonies for which a teacher may lose the teacher's license. It also establishes an administrative procedure for a student who has been removed from a classroom.

Effective Date: Upon passage; July 1, 2009; January 1, 2010.

Explanation of State Expenditures: *Summary:* The bill would have the following expenditure and administrative impacts:

(1) Expenditures by postsecondary education institutions may decrease to the extent they currently request and pay to obtain the limited criminal history information of incoming students. The extent of the expenditure decrease is indeterminable because the number of requests currently made by institutions for the limited criminal history background information of incoming students is unknown.

(2) The Indiana State Police would experience a change in workload due to: (a) any increase in the limited criminal history requests made by postsecondary education institutions; (b) any decrease in limited criminal history requests made as a condition of receiving a teaching license; and (c) any increase in requests for national criminal history information from new school employees.

(3) The Department of Education (DOE) would experience a minimal increase in staff workload to operate the database regarding school employees with certain felony convictions and to train school corporations in the proper use of the database. The bill requires the DOE to develop and maintain this database. DOE reported they currently have a data system in place that can track the required information contained in the bill.

(4) The Attorney General and the Superintendent of the Department of Education will experience a minimal increase in workload to provide notices to teachers concerning qualified immunity provided in the bill and to defend teachers whose cases require defense from the Attorney General.

Background Information:

Notice of Qualified Immunity: This bill will increase the workload of the Attorney General and the Superintendent of the Department of Education to provide notice to teachers in the state regarding their qualified immunity. The cost to prepare annual notices for teachers is expected to be minimal.

Providing notice to teachers regarding their qualified immunity may increase the number of cases that are referred to the Attorney General for defense. The Office of the Attorney General reports that any increase in civil cases can be covered with existing resources within the Civil Rights and Employment litigation division.

Postsecondary Education Institutions Fee Exemption: Phone interviews with selected state universities revealed that the policies regarding payment for criminal background checks in postsecondary education institutions varied, with the cost sometimes paid by the student and sometimes paid by the institution. Actual numbers of criminal background checks by postsecondary institutions was indeterminable because of varying policies and because few institutions kept historical data on the annual number of background checks requested.

Indiana State Police: Exempting postsecondary institutions from fees used to pay for processing requests would require ISP to manage the additional workload within their current level of resources. Additionally, any change in workload that ISP might experience from a decrease in limited criminal history information requests made by teachers applying for licensure may be offset with an increase in the number of national criminal history information requests. Any change in workload will depend on differing processing times required for each type of criminal history request. [Note: ISP reverted \$3.1 M to the General Fund at the end of FY 2008.]

Fingerprint Vendor Selection: The ISP reports that an applicant fingerprint vendor has recently been selected

and that the final price for the fingerprint transaction has yet to be finalized. This contract will allow the Records Division of the ISP to receive applicant fingerprint cards electronically and will result in more efficient operations in the Records Division by decreasing workload and increasing response time for requested background checks. The selection of a fingerprint vendor may influence revenue to the General Fund, as well as the workload of the ISP under the bill. Actual impact on workload and revenue is indeterminable as information regarding the vending contract is not currently available.

Criminal History Checks: A name-based limited criminal history check is defined as a criminal history check that searches within the state any criminal activity associated with a person's legal name(s). This check must include (1) a disposition and (2) a photograph of the person who is the subject of the limited criminal history, if a photograph is available. The term includes information about any arrest or criminal charge that occurred less than one year before the date of a request even if no disposition has been entered. A limited criminal history background check is obtained through the ISP.

The bill defines that an expanded name-based criminal history check includes (1) a search of the records maintained by all counties (or similar government unit) in Indiana or another state where the applicant has resided and a check of either the sex offender registries in all 50 states or the National Sex Offender Registry maintained by the U.S. Department of Justice (DOJ), or (2) a national criminal history background check (defined below) and a check of either the sex offender registries in all 50 states or the National Sex Offender Registry maintained by the U.S. DOJ.

A national criminal history background check is defined as a fingerprint-based check that uses the Federal Bureau of Investigation's (FBI) Automated Fingerprint Identification System (AFIS) to match an applicant's fingerprints to any crimes committed by that applicant nationally or any other method of positive identification. A national criminal history background check does not provide a search of the National Sex Offender Registry or the sex offender registries maintained by the 50 states. A national criminal history background check is also obtained through the ISP.

A criminal history check review challenge occurs when an applicant who received a name-based limited criminal history check challenges the results by submitting to a fingerprint-based criminal background check performed by the ISP.

Explanation of State Revenues: Summary: The bill eliminates the requirement in current law that applicants for a teaching license submit limited criminal history information. The result is an expected decrease in state revenue to the General Fund and the Indiana Office of Technology Portal Fund of approximately \$182,400 in FY 2010 and \$187,000 in FY 2011.

Background Information:

A breakdown detailing the loss of revenue per year from limited criminal history background checks is presented in Table A below. Information on national criminal history background check fees is included in Table B below. In FY 2007, ISP reports that criminal background checks generated \$2.3 M in revenue for the General Fund.

Table A. Decreases in Limited Criminal History Requests and Revenue.

	Total Requests	General Fund	IOT Portal Fund
FY 2010	13,000	\$91,000	\$91,240
FY 2011	13,360	\$93,250	\$93,766
Total	26,360	\$184,250	\$185,006

Teachers can obtain three different teaching licenses; one that must be renewed every 2 years, one that must be renewed every 5 years, and one that must be renewed every 10 years. Using information regarding teacher's years of experience, it was assumed that all teachers with 0 or 1 year of experience would apply for only the 2-year licensure, teachers with 2 years of experience would apply for 5-year licensure, and teachers with 7 years of experience or any year of experience ending with 7 would apply for 10-year licensure. Assuming there is no teacher attrition in the state, a total of 13,000 licensure applications are expected to be received in FY 2010 and 13,360 licensure applications are expected to be received in FY 2011.

(Revised) Individuals seeking employment with a school corporation, charter school, or accredited nonpublic school may elect to obtain a national criminal background check to meet the requirements of the bill. Revenue to the General Fund will increase to the extent that new school employees obtain national criminal history background checks; however, the number of requests is indeterminable. Revenue received from national criminal history checks would be deposited into the General Fund and would help to offset state revenue reductions from decreases in the requests for limited criminal history information; however, this amount is also unknown.

Table B: Local School Criminal Background Check, Current Law and As Proposed.		
	Current Law	As Proposed
Type of Check and Requirement	All licensure applicants are required to submit at least a limited criminal history check. However, depending on school corporation or charter school policy, <u>may</u> be required to submit a national criminal history check for new hires.	Licensure applicants would no longer be required to submit criminal history information as a condition of licensure. Individuals applying for employment with a school corporation, charter school, or accredited nonpublic school would be required to obtain either (1) a search of the records maintained by all counties (or similar government unit) in Indiana or another state where the applicant has resided or (2) a national criminal history check; and a check of either (1) the National Sex Offender Registry or (2) the sex offender registries for all 50 states.
Fee	<u>Limited</u> : \$16.32 for persons who do not subscribe to AccessIndiana, \$15 for AccessIndiana subscribers, and \$7 by mail; fee is waived for school corporations; or <u>National</u> : \$32.25, \$15 of which is deposited into the state General Fund, \$17.25 is forwarded to the federal government.	National criminal history check: \$32.25, \$15 of which is deposited into the state General Fund, \$17.25 is forwarded to the federal government. The fees to search the records maintained by all counties (or similar government unit) in Indiana or another state where the applicant has resided and complete a search of the sex offender registries in all 50 states or the National Sex Offender Registry are not known. However, no revenue would be forwarded to state or local governments.

Postsecondary Schools of Education Fee Exemption: The bill exempts a postsecondary educational institution from paying a fee for a limited criminal history record of a student in the institution's school of education before the student begins the student's field or classroom experience. However, the bill also allows ISP to charge the student. To the extent a postsecondary education institution currently obtains a name-based limited criminal history check for the purposes of the bill and the ISP were to not charge the student, the state would experience a decrease in revenue to the state General Fund and the IOT Portal Fund. Actual decreases would depend on the number of requested name-based limited criminal history checks by the school, the method in which the checks were obtained, and the fee policy of the ISP. Postsecondary education institutions will experience a decrease in expenditures only to the degree they were paying for criminal background checks for students prior to this bill.

Modification of Criminal History Check Policy: Fees vary for limited criminal history background checks and depend on the method in which the information is obtained. Revenue from fees collected is deposited into the state General Fund and the IOT Portal Fund. Currently, individuals challenge the results of a name-based criminal background check by requesting a fingerprint-based review challenge. Fees are assessed for a review challenge and these fees are deposited in the General Fund. Any change in revenue would depend on the number of persons currently requesting a review challenge (for which the state would experience a decrease of \$10 per review challenge) and the number of people who would, under the bill, obtain a name-based expanded criminal history check (for which the state would experience no increase in revenue) and then subsequently obtain a review challenge (for which the state would experience an increase in revenue of \$10 per review challenge).

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Office of the Attorney General; ISP; DOE; IOT; Postsecondary schools of education.

Local Agencies Affected: Local school corporations and townships; Charter schools

Information Sources: Major Doug Shelton, ISP, (317) 232-8265; Indiana Department of Education Databases; ISP Record Division, ISP Website (www.in.gov/isp); Dean Mark Ferguson, Vincennes University, (812) 888-4301; Kathy Herald, Ball State University College of Nursing, (765) 285-1834; Tom Warner, Ball State University Associate Vice President for Business Affairs, (765) 285-1133; Cindy Wise, Indiana University, (812) 855-9845; Cathy Sleeth, Purdue University (765) 494-5927; Debbie Hineline, Indiana Department of Education, (317) 232-0840; Neil Ruddock, Indiana Department of Education, (317) 232-6671; <http://www.instantcriminalchecks.com>.

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